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REMARKS

Independent claim 1 has been amended to more particularly recite the subject matter that the applicant regards as his invention. Among the amendments to that claim are several clarifying amendments, along with the introduction of the subject matter of original claim 5, which has been canceled without prejudice or disclaimer.

Briefly, the present invention relates to an improved beverage packaging unit that is directed to providing a container that results in improved efficiency when transporting such containers, and to a container having improved hygiene when drinking from such containers. The transportation efficiency is achieved by making the several walls of the container in parallepedal form, rather than in the more conventional cylindrical form, which serves to decrease transportation volume by permitting tighter packing of the containers, thereby eliminating void spaces between adjacent containers when they are placed in shipping cartons. The hygiene improvement is achieved by enabling drinking of beverages from the container without direct contact by the drinker's lips with an upwardly-facing container surface that has been exposed to the surroundings after filling and application of a closure element.

As amended, claim 1 more clearly recites the form of the container and also more specifically recites the form of the closure element, which completes the parallepedal form of the packaging unit when the closure element is applied to the tubular part that extends from a bevelled corner of the packaging unit. The

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structural features of the closure element and its spatial arrangement relative to the box-like body have been amplified for clarification.

Claims 1-6 were rejected as obvious based upon the combination of the Vlasaty, et al. '015, the Fujimoto '629, and the Case '147 references. The primary Vlasaty, et al. reference relates to a box-like container 10 having a triangular-shaped corner wall 21 from which a tubular part 24 extends to form a pouring spout 22. The tubular part 24 is threaded to receive a circularly-shaped screw cap that is removed in order to allow dispensing of the product from the container (see Vlasaty, et al., Figs. 11, 12, and 16; and col. 2, lines 46-51). And it was acknowledged in the Action that the Vlasaty, et al. reference "fails to teach the closure element being a generally pyramidal body, and also fails to teach the closure element having a cavity extending therethrough, which is rotated into alignment with an opening in the tubular part."

The Fujimoto reference was cited to show a container having a pyramidal closure element. But as was the case with the Vlasaty, et al. reference, the Fujimoto reference also fails to teach the closure element having a cavity extending therethrough. And significantly, the Fujimoto reference also fails to teach or suggest that the closure element has a triangular surface that overlies a triangular surface at an upper corner of the container body, it fails to teach or suggest a tubular part that extends outwardly from the triangular surface, and it fails to teach or suggest that the closure is rotated so that a cavity within the closure element is brought into alignment with an opening in the tubular part to allow dispensing from an opening on an outer face of the closure element, as

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recited in amended claim 1. Instead, the lid 220 of the Fujimoto reference must be removed (see Fujimoto, col. 2, lines 14-15) to allow the product to be dispensed from the container to expose a corner opening (see Fujimoto, Figs. 13-15) that is not formed on a tubular part that extends from a triangular surface at a corner of the container, as claimed. Additionally, the lid 220 is not rotated for dispensing the product, but must be removed in order to allow the product to be dispensed and to allow the lid to be used as a measuring cup (see Fujimoto, col. 1, lines 55-56; and col. 2, lines 15-18).

The Case reference was cited for disclosing a closure cap that is snap-connected to a collapsible tube and that includes "a cavity extending therethrough, which is axially rotated into alignment with an opening in the tubular part, in order to dispense the container products," as was noted in the Action. But the Case container is a collapsible tube that does not have a bevelled corner that includes a triangular surface, nor is the Case closure element a pyramidal body having a bottom surface that overlies a corner of the tubular container to form a parallelepiped, as claimed.

None of the references relied upon individually shows or even suggests the structure as it is claimed in amended claim 1. Additionally, the references contain no teachings or suggestions that would motivate one of ordinary skill in the art to attempt to combine them as the examiner has done. As noted above, each of the references relied upon by the examiner relates to a different structure than that to which the present invention is directed, and none of the references teach the structure as herein claimed.

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In connection with an obviousness assessment, it is not sufficient that individual references merely disclose individual elements or components that make up the claimed combination, because it is the specific, claimed combination of particular elements in a particular way, and not the mere existence of those elements, that must suggest the invention. Moreover, and in the context of combining teachings of particular references, the references cited and relied upon in this instance do not contain any hint as to how they could be combined to arrive at the invention as claimed. In that regard, it is not apparent which features of which reference are to be combined with which features of another reference, and which features of which reference are to be ignored or discarded. There is no link between the references that would lead one having only ordinary skill in the art to combine them. Therefore, the only motivation for combining the references in the manner the examiner has done is the disclosure of the present application. But to use as a road map or as a template a disclosure by an inventor to assemble references that are directed to different problems and that teach different structures for different functions, and to arbitrarily select and combine individual parts of such references that allegedly can be combined to render obvious that which only an inventor has taught, is an improper hindsight reconstruction of the prior art while having an applicant's invention in mind. Additionally, it amounts to using against an inventor that which only he has taught. Thus, the invention as herein claimed is urged not to be obvious to one having only ordinary skill in the art, based upon the disclosures contained in the several references relied upon by the examiner.

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At best, the Case closure could be applied to the Vlasaty, et al. container, but that combination would not include a pyramidal closure. Nor would it allow the closure to be removed and used as a measuring cup, as clearly taught by the Fujimoto reference. Because of the considerable structural and functional differences between the several references relied upon, one having only ordinary skill in the art would not be led to the individual references relied upon, nor would he be led to combine their disclosures as the examiner has done.

Based upon the foregoing amendments and remarks, the claims as they now stand in the application are believed clearly to be in allowable form in that they patentably distinguish over the references that were relied upon, whether those references be considered in the context of 35 USC 102 or of 35 USC 103. Consequently, this application is believed to be in condition for allowance, and therefore reconsideration and reexamination of the application is respectfully requested with a view toward the issuance of an early Notice of Allowance.

The examiner is cordially invited to telephone the undersigned attorney if this amendment raises any questions, so that any such question can be quickly resolved in order that the present application can proceed toward allowance.

Respectfully submitted,



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Alfred J. Mangels
Reg. No. 22,605
4729 Cornell Road
Cincinnati, Ohio 45241
Tel.: (513) 469-0470